

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0653
ADJUSTED GROSS INCOME TAX
For Years 1995, 1996, and 1997**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax—Holding companies as part of a unitary business

Authority: 45 IAC 3.1-1-153(c); 45 IAC 3.1-1-153(b); *Allied-Signal Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992); *F.W. Woolworth v. Taxation and Revenue Dep't. of New Mexico*, 458 U.S. 354 (1982); *Asarco, Inc. v. Idaho State Tax Comm'n.*, 458 U.S. 307 (1982); *Exxon Corp. v. Dep't. of Revenue of Wisconsin*, 447 U.S. 207 (1982); *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 445 U.S. 425 (1980); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 180, n.19 (1983);

Taxpayer, an out-of-state corporation, protests the imposition of the adjusted gross income tax on distributions it received from an Indiana partnership.

STATEMENT OF FACTS

Taxpayer, an out-of-state corporation, is a general partner in an Indiana general partnership (hereafter "partnership"). The partnership is a joint venture between two corporations and is engaged in the business of the manufacture and wholesale distribution of agrichemicals used by the agricultural industry. Taxpayer has a 34% interest in the partnership.

DISCUSSION

I. Gross Income Tax—Partnership income in a unitary or non-unitary business

The audit determined that there was no unitary relationship between taxpayer and the partnership and that the partnership's "income" was entirely attributable to the partnership's home state (Indiana) under 45 IAC 3.1-1-153(c). Taxpayer maintains that there is a unitary relationship and that, as a result, the partnership's "income" should be apportioned.

45 IAC 3.1-1-153(b) determines whether or not a unitary relationship exists between a taxpayer and its partnership interests. In part, the regulation states that if a "corporate partner's activities and partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula...." Taxpayer must demonstrate that the relationship

between itself and the holding company partnership exhibits the characteristics of a unitary relationship.

The Supreme Court has developed a three-part test to determine the existence of a unitary relationship; common ownership, common management, and common use or operation. *Allied-Signal Inc. v. Director, Div. of Taxation*, 504 U.S. 768 (1992); *F.W. Woolworth v. Taxation and Revenue Dep't. of New Mexico*, 458 U.S. 354 (1982); *Asarco, Inc. v. Idaho State Tax Comm'n.*, 458 U.S. 307 (1982); *Exxon Corp. v. Dep't. of Revenue of Wisconsin*, 447 U.S. 207 (1982); *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 445 U.S. 425 (1980).

45 IAC 3.1-1-153(b) gives no indication of the precise degree of ownership required to demonstrate common ownership. However, the record indicates that taxpayer owns 34 percent of the holding company partnership. Therefore, the evidence does not establish a significant amount of common ownership between the parties.

The second relevant criteria is that of common management. Common management is demonstrated when the parent company provides a management role that is "grounded in [the parent company's] own operational expertise and its overall operational strategy." *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 180, n.19 (1983). Taxpayer has offered no proof to indicate common management. Rather, taxpayer has merely asserted that, as a general partner, it should be taken for granted that taxpayer participates in the management functions of the partnership. It is true that taxpayer is allotted an equal share of seats on the board of directors of the partnership as that of its corporate partner. However, mere participation in management does not suffice to show common management. Finally, there is nothing to indicate what decisions were made by the partnership or what degree of involvement taxpayer has in the day-to-day operation of the partnership's business.

The third relevant criteria is that of common operation or use. There is no question that taxpayer operates and uses the partnership. However, there is little or no substantive information regarding the degree or extent to which taxpayer either operates or uses the partnership and no basis presented to conclude that there is *common* operation or use.

Regardless of the relevance of the three criteria and to what degree taxpayer can demonstrate its compliance with those criteria, taxpayer is entitled to a consideration of whether requiring taxpayer to employ the standard apportionment formula accurately portrays taxpayer's Indiana adjusted gross income or whether, by doing so, taxpayer's Indiana income is distorted. IC 6-3-2-2(p). However, taxpayer has not proffered any formulae that would potentially more accurately portray taxpayer's income.

FINDINGS

The taxpayer is respectfully denied.